

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye
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Gregory Scott

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition of Brooks Fiber
Communications of Minnesota, Inc., MCI
WorldCom Communications, Inc. and MCI
Metro Access Transmission Services, Inc.
Petition for Extension of Service Area
Deadlines

ISSUE DATE: October 21, 2003

DOCKET NO. P-5487,3012,5321/M-03-712

ORDER VARYING RULES AND
GRANTING EXTENSION

PROCEDURAL HISTORY

On August 17, 2000, the Commission in its ORDER VARYING RULES REQUIRING SERVICE FOR THREE YEAR PERIOD¹ granted MCI WorldCom Communications, Inc.(MCI Worldcom), Brooks Fiber Communications of Minnesota, Inc. (Brooks), and MCI Metro Access Transmission Services (MCI Metro), a three year extension to provide local exchange service within each company's entire certificated service area.

On May 8, 2003, MCI, Inc. (MCI) and the three MCI subsidiaries authorized to provide competitive local exchange carrier (CLEC) service in Minnesota - MCI Communications, Inc., (formerly known as MFS Intelenet of Minnesota, Inc.), Brooks Fiber Communications of Minnesota, Inc., and MCI Metro Access Transmission Services, LLC, (collectively MCI or MCI entities) requested an additional three year extension of the service area deadlines set forth in Minn. Rules, part 7812.0200, subp. 4.

On June 9, 2003, Qwest Corporation (Qwest) filed comments opposing MCI's petition.

On July 28, 2003, the Department of Commerce (DOC) filed comments supporting MCI's request for a time extension and a variance of Minnesota Rules.

¹ In Docket No. P-5487,3012,5321,466/M-00-520, *In the Matter of a Request by MCI Worldcom Communications, Inc., Brooks Fiber Communications of Minnesota, Inc., MCI Metro Access Transmission Services, and Sprint Communications Company L.P. for a Time Extension and Waiver of Commission Rules.*

On September 25, 2003, this matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Background

MCI filed its petition in order to avoid the automatic revocation of its authority to provide local service that would occur for failure to provide, throughout its entire local service area, local service consistent with Minn. Rules, part 7812.0600, within the 36-month timeframe set by Minn. Rules part 7812.0200, subp. 4.

The MCI entities provide the following local service:

- MCI Metro Access Transmission, LLC (MCI Metro) is authorized to provide local service in the territory served by Qwest. It currently offers service to business customers throughout the Twin Cities rate centers, except in the community of Elk River and in the Stillwater and St. Croix Beach wire centers. MCI Metro also provides local residential service in Zones 1, 2 and 3, as established by the Commission.
- Brooks Fiber Communications of Minnesota, Inc. (Brooks Fiber), is authorized to provide local service in the Minneapolis-St. Paul toll free exchanges of Qwest and Citizens Minnesota. It currently offers local service to business customers in 35 Qwest wire centers.
- MCI Communications, Inc., (MCI Communications) is authorized to provide local service in the territory served by Qwest and has provided resold services under this certificate.

II. The Request of the MCI Entities

The MCI entities do not contemplate being able to offer basic local service throughout their entire local service area within the deadline established by Minn. Rules part 7812.0200, subp. 4. Therefore, they request a three-year extension of time to make service available to all customers in their authorized service territory.

In support of their request, the MCI entities indicated that they were committed to competing in the local market and that they have already made a significant investment in entry into the local service market.

They argued that factors beyond their control prevented them from meeting the time requirement, including uncertainty regarding the full scope of Qwest and competitive local exchange carriers (CLEC) obligations.

III. Qwest's Position

Qwest argued that, if MCI's current request is granted, MCI will have had a total of nine years to come into compliance with the rules and there is no assurance that MCI will be in compliance at the end of the nine years. It argued that MCI has already been allowed six years to comply with the rule, that MCI makes no representation that it will provide service as required under the rule at the end of an additional three year period, and that MCI does not provide any reason for its current failure to meet the rule requirements. Qwest argued that Minn. Rules part 7812.0200, subp. 5 requires that MCI provide not only a basis for its failure to meet the deadline but also provide an alternative date by which it will begin offering service in the areas in which it did not meet the deadline.

Further, Qwest argued that MCI has not met the requirements for a variance.² MCI has not demonstrated that the rule imposes an excessive burden upon it. Rather, MCI just asserts that the state regulatory environment is not sufficiently pro-competitive and it cannot make a profit. Qwest argued that MCI has not explained how, by complying with this rule, it faces an excessive burden different from any other local service provider governed by this rule. Qwest also argued that granting the variance would conflict with standards imposed by law because MCI has not met the requirements set forth by Minn. Rules Part 7812.0200, subp. 5 for an extension.

IV. DOC's Position

The DOC supported MCI Metro and Brooks Fiber's request for a three-year extension of time in which to serve all customers in its authorized territory.³ It argued that MCI Metro and Brooks Fiber have indicated their continued interest in serving throughout their certificated territory by seeking an extension of time and that there was no purpose in revoking either Company's authority in exchanges in which it was not currently serving. Further, it argued that granting the variance is consistent with the public interest goal of enhancing local competition.

The DOC also argued that MCI Metro does not currently serve business customers in all rate zones, and Brooks Fiber does not serve residential customers. Varying the rules would grant these Companies additional time to make service available to all customers.

V. Commission Action

Under Minn. Rules 7829.3200 the Commission may grant a variance to any of its rules upon making the following findings:

² See Minn. Rules Part 7829.3200.

³ The DOC determined that MCI Communications was complying with Minn. Rules by offering service within Qwest exchanges and does not require an extension.

- A. enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- B. granting the variance would not adversely affect the public interest; and
- C. granting the variance would not conflict with standards imposed by law.

The Commission concurs with MCI and the DOC that these standards have been met and that these variances should be granted. The Commission will grant the MCI entities a variance of Minn. Rules part 7812.0200, subp. 4 and Minn. Rules 7812.0600 for a three-year extension of time to meet its service obligations in its authorized service territory.

The Commission finds that to revoke the authority of the MCI entities at this time would not only harm the customers currently being served by them, but impose an excessive burden on MCI.

The Commission finds that granting these variances would not adversely affect the public interest and would in fact serve the public interest by allowing additional time to promote competition.

Finally, the Commission finds that granting these variances would not conflict with any standards imposed by law.

The Commission will therefore grant the variances.

ORDER

1. The MCI entities are hereby granted a variance of Minn. Rules 7812.0200, subp. 4 and Minn. Rules 7812.0600 for a three-year extension of time in which to serve all customers in their authorized service territory.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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